

**AGREEMENT REGARDING PROPOSED STREAMBED ALTERATION  
FOR LAKE DAVIS PIKE ERADICATION PROJECT**

**THIS AGREEMENT** is entered into by the Department of Fish and Game ("Department") for the Department's Lake Davis Pike Eradication Project ("Project"). This Agreement covers all activities subject to Fish and Game Code section 1602 necessary to carry out the Project, as described below and described in the notification provided or submitted by the Department's North Central Region on behalf of the Department ("Operator"), whether carried out by Department employees, agents, contractors, or representatives, or the Department of Water Resources ("DWR").

**RECITALS**

**WHEREAS**, the purpose of the Project is to eradicate pike from Lake Davis and its tributaries, primarily by treating those waters with rotenone;

**WHEREAS**, as part of the Project, the Operator will need to temporarily dewater segments of tributaries to Lake Davis to chemically treat them, and may need to install temporary extensions on existing boat ramps at Lake Davis to enable watercraft to enter and exit the reservoir, and after the Project is completed, remove any boat ramp extensions;

**WHEREAS**, DWR operates Lake Davis as a reservoir and Grizzly Valley Dam, which controls the release of water from the reservoir into Big Grizzly Creek below the dam;

**WHEREAS**, pursuant to an Interagency Agreement between the Department and DWR, DWR will assist the Department in implementing the Project by releasing water into Big Grizzly Creek to lower Lake Davis, and thereafter ceasing all water releases into the creek on a temporary basis, both of which are necessary to complete the Project;

**WHEREAS**, this Agreement covers the activities summarized above and fully described in the Executive Summary and Section 2 of the final Environmental Impact Report/Environmental Impact Statement for the Project ("EIR/EIS") ("Covered Activities");

**WHEREAS**, because the Operator determined that the Covered Activities will on a temporary basis substantially obstruct or divert the natural flow of the tributaries to Lake Davis identified in the final EIR/EIS ("tributaries") and Big Grizzly Creek, and substantially change the beds, banks, and/or channels of those waters and Lake Davis, the Operator submitted a notification (Notification No. 1600-2007 -0001-BD) to the Department's former Central Valley Bay Delta Branch, now part of the Bay Delta Region, on behalf of itself and DWR in accordance with Fish and Game Code section 1602;

**WHEREAS**, the Department's Bay Delta Region has determined that the Covered Activities could have a substantial adverse effect on fish and wildlife resources, and therefore prepared this Agreement in accordance with Fish and Game Code section 1603; and

**WHEREAS**, the Department's Bay Delta Region has determined that the avoidance, minimization, and mitigation measures identified in Section 7 and Appendix G in the final EIR/EIS that apply to the Covered Activities are sufficient to protect the fish and wildlife resources those activities could substantially adversely affect,

**NOW THEREFORE**, the Department, as represented by its Bay Delta Region, proposes the protective measures described below, and the Operator agrees to implement those measures in completing the Covered Activities.

### **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

The Operator shall comply with all avoidance, minimization, and mitigation measures identified in Section 7 and Appendix G in the final EIR/EIS that apply to the Covered Activities, which are incorporated herein by reference. Those measures are summarized below. In the event of any conflict between the measures below and those in Section 7 and Appendix G in the final EIR/EIS that apply to the Covered Activities, the measures in Section 7 and Appendix G in the final EIR/EIS shall apply. In the event some of the measures in Section 7 and Appendix G in the final EIR/EIS that apply to the Covered Activities are not included below, the Operator shall nonetheless comply with those measures.

#### **Water Releases Into Big Grizzly Creek**

1. All releases of water from Lake Davis into Big Grizzly Creek below Grizzly Valley Dam shall be stopped no earlier than September 4, 2007, and shall resume no later than 45 days after the releases are stopped.

2. Chemically-treated waters shall be neutralized in accordance with the requirements of the Central Valley Regional Water Quality Control Board or the State Water Resources Control Board before being released into Big Grizzly Creek.

3. To mitigate for the loss of any fish and special status amphibians as a result of reduced flow in Big Grizzly Creek during the time period specified in Condition 1, the Operator shall comply with Mitigation AR-1 and TW-1 in Section 7 in the final EIR/EIS and Appendix G in the final EIR/EIS.

#### **Time Period for Chemical Treatment**

4. The Operator shall complete the chemical treatment of the tributaries and Lake Davis no later than October 31, 2007, and shall conduct the associated cleanup as soon as possible after the chemical treatment is completed.

Chemical Treatment of Tributaries

5. The Operator may place barriers in the tributaries to isolate stream reaches and breach beaver dams to facilitate the chemical treatment of the tributaries and to prevent pike from entering previously treated stream reaches, provided:

- a. the barriers are constructed with expanded metal sheets, fish netting, sandbags, or other materials approved by the Department;
- b. any sandbags are filled and barriers are constructed outside the riparian zone;
- c. the barriers are installed in a manner that causes little or no damage to stream banks
- d. any damage to stream banks is repaired after the chemical treatment is completed and after consulting the Department;
- e. all barriers are removed upon completing the chemical treatment of the tributaries;
- f. if the Operator needs to remove debris, such as branches, leaves, and mud, to keep ponds and beaver tunnels dewatered, it may do so up until the chemical treatment is completed and by hand only;
- g. willow flycatcher and yellow warbler surveys shall be conducted prior to the chemical treatment of any tributary; and

6. To mitigate for the loss of fish and wildlife resources resulting from the chemical treatment of the tributaries, the Operator shall comply with Mitigation AR-9 (fish), AR-10a through AR-10f (macroinvertebrates), TW-1 (special status species), and TW-5 and TW-6c (willow flycatcher and yellow warblers) in Section 7 in the final EIR/EIS and Appendix G in the final EIR/EIS.

Boat Ramps

7. If the Operator needs to install a temporary extension on the boat ramp at Honker Cove and Mallard Cove to access the reservoir, it shall comply with Conditions 8,9, 10, and 12 below.

Raptors

8. In order to protect raptors when completing the Covered Activities, the Operator shall comply with Mitigation TW-6a and TW-6b in Section 7 in the final EIR/EIS.

9. In addition to Condition 8, pre-project surveys shall be conducted for active raptor nests within a ½ mile radius of all pre-treatment, treatment, construction, and storage sites. Such surveys shall be conducted by a qualified biologist approved by the Department within 21 days prior to commencing the activity. All survey results shall be submitted to the Department for review prior to commencing the activity.

10. If an active raptor nest is located within a ½-mile radius of any pre-treatment, treatment, construction, and storage sites prior to September 1, 2007, the Department shall determine the measures the Operator must implement to avoid nest abandonment. Such measures may include, but not be limited to, the following:

a. Where the Operator is unable to sufficiently limit any pre-treatment, treatment, construction, and storage work to avoid nesting raptors, a Department-approved biological monitor shall monitor nesting activities for a predetermined amount of time from August 15th through fledging while the work is in progress.

b. If it appears that the activities are disturbing nesting raptors, the Operator shall comply with Mitigation TW-6b in Section 7 in the final EIR/EIS.

#### Vegetation Removal

11. If the Operator finds it necessary to trim riparian vegetation, including willows, to gain access to a tributary, the Operator may do so provided no willows are removed and the Operator complies with Mitigation VEG-2a through VEG-2g and VEG3a through VEG-3d in Section 7 in the final EIR/EIS.

12. To protect nesting habitat for bird, raptor, and mammal species, any snag or hollow tree greater than 12 inches in diameter at breast height within the vicinity of a pre-treatment, treatment, construction, or storage site shall be flagged and avoided. If a snag or hollow tree cannot be avoided, it shall be removed intact and relocated to an area identified by the Department.

13. If any special status plant species are found in the vicinity of a pre-treatment, treatment, construction, or storage site, the species shall be flagged and avoided and the Operator shall comply with Mitigation VEG-4a through VEG-4e in Section 7 in the final EIR/EIS. If the species cannot be avoided, the Operator shall compensate for its permanent loss at the ratio of 3: 1; the location of plant replacements shall be approved by the Department; plants shall be replaced within one year of their loss; the Operator shall maintain an 80% survival rate of each species by the third year after replacement; and the Operator shall be responsible for replacement planting to achieve those requirements.

14. If mitigation specified in Conditions 11 or 13 is necessary, the Operator shall submit a mitigation report to the Department's Portola Field Office by December 31, 2008. A final mitigation monitoring report for any replacement plantings shall be submitted to the Department by December 31, 2011. The report shall include at a minimum the following two components:

- a. A description of the loss of any special status plant species and the measures taken to replace the plants in suitable habitat.
- b. A description of the success criteria used and any actions taken where the criteria were not met.

### **OTHER CONDITIONS**

#### **Pollution**

15. The Operator shall not dump or leave behind any litter or debris within any stream zone. Any litter or debris shall be removed daily and properly disposed of at an appropriate site. All litter and debris shall be removed from all work sites upon completion of the Project.

16. All equipment and vehicles driven or operated near or within stream and lake zones shall be checked daily to prevent the leaking of materials that could be deleterious to aquatic life. The Operator shall comply with the plans for staging areas, the Site Safety Plan, Spill Contingency Plan, Chemical Treatment Plan, and all other plans identified in the final EIR/EIS, or parts thereof, that apply to the Covered Activities.

17. Clean-up of any spill covered in the Spill Contingency Plan shall begin immediately. The Operator shall notify the Department immediately of any spills and shall consult with the Department regarding clean-up procedures. In the event of a spill, the Operator shall follow all provisions of the Spill Contingency Plan in the final EIR/EIS.

#### **Miscellaneous**

18. The Operator shall ensure that all individuals who will be carrying out any of the Covered Activities understand the conditions in this Agreement by conducting an orientation program for those individuals. The program shall consist of a brief presentation from a Department-approved biological monitor about the biology of the species the Covered Activities could affect, their habitat needs, their legal status, and the prohibitions on the take of listed species under the California Endangered Species Act. The Operator shall also prepare and distribute a fact sheet that contains this information. Upon completion of the orientation, the Operator shall require each individual to sign a form attesting that they attended the program and understand the conditions in this Agreement. The Operator shall submit the form to the Department's Portola Field Office.

19. A copy of this Agreement shall be kept at all work sites and provided to any Department personnel upon request.

Liability

20. The Operator shall be solely responsible for compliance with this Agreement by Department employees, agents, contractors, and representatives, and DWR.

Compliance With Other Laws

21. Nothing in this Agreement authorizes the Operator to trespass, nor does it relieve the Operator of its responsibility to comply with all applicable federal, state, or local laws or ordinances in completing the Covered Activities.

Amendments

22. This Agreement may be amended only by mutual written agreement between the Department and the Operator.

Effective Date


23. This Agreement becomes effective on the date of signature by the Department, which shall be after the Operator's.

Expiration

24. This Agreement expires on December 31, 2007, unless it is extended in accordance with Fish and Game Code section 1605. After the Agreement expires, the Operator shall remain responsible for implementing any mitigation or other measures to protect fish and wildlife resources specified in the Agreement.

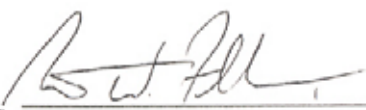
**SIGNATURES**

OPERATOR

  
Sandra Morey, Manager  
North Central Region

Date: 1/23/2007

DEPARTMENT OF FISH AND GAME

  
for Chuck Armor, Manager  
Bay Delta Region

Date: 1/23/07

Operator's Initials SM